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THE BALLOT IN ENGLAND.

I. *Its History.*

IT is a singular historical fact that the English ballot act should have recently attracted so much attention in the United States. For nearly half a century of English political controversy the ballot was regarded as a distinctly American institution and it was advocated or resisted by arguments drawn from the experience of its working and the opinions of English travellers. To call such a method of voting "American" was, in the judgment of hysterical patriots, to condemn it. Under present conditions in the United States, it appears to be a strong argument in favor of a particular method of voting that it is "English." Bills based upon the English ballot act have been recently brought into the legislatures of New York, Massachusetts, Wisconsin, and Michigan. Wisconsin and Massachusetts, indeed, have passed acts in several respects patterned on the English act. American visitors to England have agreeably surprised their friends here by the interest they have manifested in the ballot, and by the minuteness of their inquiries respecting it. Under these circumstances, it seems desirable to give an historical review of the ballot in this country, without which the form and working of the act of 1872 cannot be properly understood, to indicate the points upon which it has been so eminently successful, and to deal with one or two practical matters in the adaptation of the English system to American conditions.

The history of the ballot in England has never been written, and this fact will excuse some careful details. Classical scholars had long been familiar with the ballot as practised in Greece and Rome, but it was regarded with no more antiquarian interest than other parts of a political system men could never think of attempting to revive. The voting urn, in fact, was about on the same practical level as the urn which contained the ashes of the dead. The first political use of the ballot-

box was in a Westminster coffee-house club in 1659.¹ With trifling exceptions, the rule at political clubs, since that date, has been to vote by ballot-balls in the election of members; and many sturdy opponents of the ballot in parliamentary contests have been so elected, without any protests or without any misgivings, to the respective clubs they frequented. The Earl of Shaftesbury was about the only person who noticed the absurdity, and experienced any conscientious scruples. In the debate on the ballot schedule of the elementary education act, in 1870, he said, "He detested secret voting. He had never blackballed a man but once, and then he told him of it immediately afterwards."²

The earliest use of the ballot in Parliament was not in England but in Scotland. In the reign of Charles II, Middleton proposed the plan in order to disqualify officials on account of their political history, and to secure individual freedom. The billeting act of 1662-4 prescribed a singular method.

First, every member of Parliament was to write with a borrowed hand the names of twelve persons, and these were to be given in to the Register, who was to hold a bag at the foot of the throne, wherein these billets were to be thrown, after which the bag was to be sealed, and to be carried up to the Exchequer Chamber, where they were to be compared, and after the number was agreed upon the billets were to be burned, and the names of such as were billeted to be concealed on oath, which form was thereafter punctually observed — only the Register having a deep-rooted quarrel against Southesk, did mark his billet with a nip when he received it, and thereby discovered his vote.³

The act was repudiated by the King, and the ballot was not again heard of until 1705, when Fletcher, of Saltoun, in his measure for a provisional government of Scotland by annual parliaments, in the event of Queen Anne's death, proposed secret voting for the protection of members from court influence. Middleton had supported his act by Greek models. When the ballot was next advocated, the "prerogative instance" cited was that of the republic of Venice. Andrew Marvell, the poet, and member for Hull, wrote a tract entitled: *The Benefit of the*

¹ Cf. Theodore W. Dwight, Harrington, *POLITICAL SCIENCE QUARTERLY*, II, 20.

² *Parliamentary Debates*, vol. 203, 3d series, p. 1193.

³ Mackenzie, quoted in Burton's *History of Scotland* (2d ed.), vol. 7, pp. 163, 164.

Ballot, with the Nature and Use thereof, Particularly in the Republick of Venice. It was privately printed in Charles II's reign, and afterwards reprinted with other tracts. The author laid down as his introductory propositions the following :

Where the Balloting is us'd those States are most free from Factions and Rebellions. There, Persons of the most accomplish'd Parts are advanc'd for their Integrity and Worth. There, Vertue is a speedy ladder to climb into Honour.

He described the Venetian method of balloting, by balls of linen, and his concluding comment is worth quoting :

All is very easily perform'd in a short time, without noise, without tumult, without animosities, and the most deserving is always elected.¹

Nothing further was written on the subject, or indeed heard about it, until 1710, when an effort was made, which is but obscurely hinted at, to introduce secret voting into parliamentary elections, in order to limit the number of placemen in the House of Commons. The country swarmed with needy and greedy officers, out at elbows, and liberated from employment by the cessation of military operations. The bill has no author's name attached to it, and the speech reported in defence of it is given without any reference. But here is its powerful argument :

The corruption of the boroughs is grown to such a height, it is so easy to procure a return, and such a latitude is left by the variety of our own determinations, that whenever any set of ministers think fit to exert themselves, they may bring in so many military officers as, together with those who have civil employments, may make up a majority.²

The Commons passed the bill, but it was "unanimously rejected" by the House of Lords. For nearly a hundred years there is a blank, as far as the ballot is concerned. The Duke of Richmond, who in 1788 propounded what was considered to be a shockingly revolutionary creed, including manhood suffrage, was discreetly silent about the ballot. Refined, high-bred, dainty English gentlemen used the ballot to preserve their personal honor and to protect their respective clubs, but it never

¹ State Tracts (London, 1693), pp. 443, 446.

² Cobbett's Parliamentary History, vol. 6, p. 889.

occurred to them that any voter needed it outside, or that electors had opinions, feelings, and consciences.

The earliest recorded use of the ballot in connection with the English Parliament was its employment in the House itself, and it is passing strange that this fact was never used in later debates on the subject. There was a ballot for twenty-one members to constitute a select committee on the tenth naval report, April 30, 1805, though there are no details as to the manner of taking it.¹ February 5, 1817, there was a ballot for a committee of secrecy, and the manner of taking it is described. Lord Castle-reagh moved the order of the day, and the speaker then desired the clerk to read over the names of the members in the order of their counties, and requested such members as had prepared lists of names of the committee to deliver them at the table. The clerk then read over the names, and members deposited their lists in the glass urn on the table. There was a second reading of names, and then a counting by a committee of inspection.² Committees to try election petitions were also elected by ballot in 1830.³ Voting by a list prepared by each voter for himself was thus the earliest form of ballot in regular use; and in 1831 it found its way into a parliamentary statute, where it is described. This was the act for the better regulation of vestries and for the appointment of auditors of accounts in certain parishes of England and Wales, October 20, 1831. Section 15 runs:

Provided always, and be it further enacted that any five ratepayers may then and there, in writing or otherwise, demand a poll, which shall be taken by ballot, each ratepayer delivering to the aforesaid inspector two folded papers, one of which shall contain the names of the persons for whom such parishioners may vote as fit and proper to be members of the vestry, and the other shall contain the names of the persons for whom such parishioners may vote as fit and proper to be auditors of accounts, provided always that each ratepayer shall have one vote and no more.⁴

The following section enacted that the inspector, without opening the papers, should deposit them in two sets of ballot-

¹ Parliamentary Debates, vol. 4, p. 511.

² Parliamentary Debates, vol. 35, p. 219.

³ Hansard's Debates, 3d Series, vol. 1, p. 632. ⁴ Statutes at Large, vol. 72, chap. 60.

ing glasses or boxes, to be closed at the end of the poll, and that where the votes were equal, the inspector should decide by lot. It is worthy of note that this method of voting (by unofficial ballots) was the early American method also, against which Englishmen so vehemently protested, in complete ignorance of its English history.

Petitions to the House of Commons, praying for the ballot, from voters complaining that they were compelled to vote "at the will of their landlords," were being presented every session. Mr. Daniel O'Connell, the famous Irishman, made the first attempt to get this method of voting legalized by an instruction to the committee of 1830 on the East Retford bill — a measure to prevent bribery and corruption. He justified this tentative experiment by the need of experience and the natural dread of a sweeping measure. Eventually, he moved a new clause that at Retford the poll should be taken "by ballot in the way hereinafter mentioned." He and Hume were tellers for the division when 21 members voted for the clause and 179 against it.¹ There was some natural disappointment that Lord John Russell's reform bill of March 1, 1831, contained no promise of the ballot, though some accounts say that the ballot was in the original draft of the measure. The return of Mr. George Grote, the banker, for the city of London, gave a new impetus to the movement from its purely classical side, though it still had the support of Mr. James Mill and the philosophic writers of the *Westminster Review*, who pleaded for American liberty, whereby the people escaped the misery of having "institutions under which they suffer, fastened upon them for ages in spite of their inclination."² In his address, Mr. Grote had insisted upon the vote by ballot and triennial elections: "Without the ballot, free and conscientious voting is unattainable; without triennial elections, the purest system of voting will fail to ensure in the member chosen a steady feeling of accountability to the people."³ Mr. Grote's maiden speech in the House was made in

¹ Hansard's Debates, N. S., vol. 22, p. 1354.

² *Westminster Review*, vol. 13, July, 1830.

³ *Personal Life*, by Mrs. Grote, 1873, p. 71.

advocating the ballot, in 1833, when it was defeated by 211 votes to 106. Henceforth he took charge of the measure, and what kind of censures he incurred may be gathered from what the *Times* said of him in 1837. He has, it remarked, "made himself the frontispiece of a revolutionary code. He has become the representative and the peculiar organ of whatever is most chimerical in theory, most reckless in experiment, most fatal and revolting in hostility to our national system." His speech of February 15, 1838, was reprinted, and a powerful deliverance it was, weighty in argument, and copious in illustration of landlord tyranny. "I wish it were possible," he said, "to lay before Parliament a return of the number of ejectments, notices to quit, changes of dealing, and dismissals from employment which have taken place as the result of the late elections."¹ The majority against Mr. Grote's motion was 117, but if he had carried it Lord John Russell would have resigned, and the ballot would have had a shorter history. It was to this speech of Grote's that Sydney Smith replied in a witty pamphlet.² He ridiculed him for preaching cowardice, for maintaining that the bold cannot be free, and for thinking the world a chess board. He did not believe that English landlords, "the men of woods, forests, and rivers," who had "the strength of the hills," were to be "baffled by bumpkins, thrusting a little pin into a little card in a little box." England was not to be governed by "political acupuncture." An interesting account of the system suggested may also be quoted :

In Mr. Grote's dagger-box, which has been carried round the country by eminent patriots, you stab the card of your favorite candidate with a dagger. I have seen another called the mouse-trap ballot-box, in which you poke your finger into the trap of the member you prefer, and are caught and detained till the trap-clerk below (who knows by means of a wire when you are caught) marks your vote, pulls the liberator and releases you.

Even Tom Moore could not resist the chaffing tendency, and his *Song of a Box* has the stanza :

¹ Reprint by Harper, p. 7.

² Ballot, by Sydney Smith, Longmans, 1839.

And oh! when at last this greatest of Grotes
Must bend to the power that at every door knocks,
May he drop in the urn like his own silent votes,
And the tomb of his rest be a large ballot-box.

The more serious arguments against the ballot were, however, drawn from differently interpreted American facts and experiences. Lord Stanley said, in 1835, that he had been in America, and he confessed that what he observed in that country did not lead him to suppose that the ballot was an efficient protection against bribery, or proved satisfactory for the attainment of secrecy.¹ Mr. James Stuart had stated that canvassing had increased in America under the ballot, and "that it is quite as well known how every man votes in Baltimore or New York as in Liverpool or Edinburgh."² Mr. Tremenheere, referring to a Boston election, said :

I went to two of the polling places, to see the process. Persons were in attendance distributing printed lists of the candidates of the three competing parties. The voter took which list he pleased, put it into an envelope, and handed it to the persons sitting in a portion of the room parted off, who were appointed to receive it. I saw no attempt at concealment or mystery ; the voting which I witnessed was as open as if no envelope had been used.³

The governor of New York, in 1850, said : "The alarming increase of bribery in our elections demands your serious attention . . . and I trust you will adopt such measures as shall effectually protect the ballot-box from all corrupting influences."⁴ Mr. Grote noted that Maclane, the American minister here, "declares himself an enemy to the system." Old John Randolph, the American orator, was quoted by Sydney Smith, in his pamphlet, as saying of Virginia : "I scarcely believe we have such a politician in all Virginia as to mention even the vote by ballot, and I do not hesitate to say that the adoption of the ballot would make any nation a nation of scoundrels if it did not find them so." Dr. Crombie is reported as saying : "No person or any party in the United States speaks of the secrecy of the

¹ Quoted in *Edinburgh Review*, April, 1838.

² Three Years in North America, quoted in *Edinburgh Review*, January, 1853.

³ *Edinburgh Review*, January, 1853.

⁴ *Ibid.*

ballot; we hear of its secrecy only from persons in the old country.”¹ A member of the Mississippi legislature assured Sir C. Lyell that “the repudiation of the state debt there would not have been carried in this country but for the facility afforded by secret voting”²—*i.e.*, in the legislature itself, which is quite another thing. Whether the ballot was believed in by American voters or not, there was still force in Mr. James Mill’s contention: “It is evidence enough that they continue to use it. Why should they, unless they like it?” Sufficient was not known of American politics to check erroneous statements and inferences, and to explain that list-voting was not a necessary feature, that official papers could be used, and that absolute secrecy was attainable. Yet when new ground was broken in England it was on the list principle, which, as already suggested, had probably been copied in America from earlier English models. Sir Charles Dilke’s amendment to schedule ii of the elementary education bill of 1870 raised the question of secret voting, and Mr. W. E. Forster accepted the principle, and proposed to limit it to London, as having had (under the vestry act of 1831, already referred to, which was embodied in Sir Benjamin Hall’s act of 1855,) some experience of the ballot. Eventually, after some contention, it was settled that the London school board was to be elected by ballot, and that the ballots should be officially prepared. The same session saw a more ambitious attempt to deal with the whole question. February 14, Mr. Leatham moved for leave to introduce a ballot-bill, referring to the evidence of the select committee on the election of 1868 as showing a progressive softening of hostility to the method on the part of witnesses whose public utterances had committed them against it. There was no longer an appeal to American but to colonial experience. The method in vogue in Victoria, Australia, was the one Mr. Leatham proposed, with modifications, as the writing of the voter’s number in an ink of chloride of cobalt, invisible at ordinary temperatures, but visible by raising the temperature 40 or 50 degrees, and the returning officer’s initials on the ballot to

¹ *Quarterly Review*, April, 1838.

² *Edinburgh Review*, October, 1853.

prevent the Tasmanian dodge of false, *i.e.*, unofficial, ballot-papers. On the suggestion of Lord Hartington, the second reading was postponed, and when it came on the noble lord said he concurred in the paragraph of the committee's report respecting the ballot, and Mr. Gladstone remarked that he was now in favor of the ballot, though he had never opened his lips before on the subject, but had always voted against it. The paragraph of the committee's report referring to the ballot has great historical significance. It reads as follows :

Much evidence has been given by witnesses not exclusively confined to any political party to show that the discontinuance of open voting and the substitution for it of secret voting, or vote by ballot, would be of great advantage in parliamentary and municipal elections. We have endeavored to extend our inquiry beyond the arguments usually employed by the advocates and opponents of the ballot, and to ascertain how it was worked in the British colonies, and in foreign states where it has been adopted. With this view we have examined witnesses from Victoria, New South Wales, South Australia, Tasmania, and have also received evidence as to the system in use in France, Italy, and Greece. The effect of this evidence has been to prove that in these countries, under a system of ballot, the poll is taken without intimidation, riot, or disorder, while in Australia bribery and treating have been greatly reduced and personal canvassing discouraged. It remains to be considered whether the ballot should be adopted in this country. The principal objections which have been advanced against the ballot as applied to our elections are, that the act of voting is a public duty and should involve a public responsibility ; that it would lead to hypocrisy and deception ; that it would do little to restrain the practice of treating ; that it would encourage bribery by making it more difficult to detect ; that it would be wholly inoperative in the case of spiritual intimidation such as that which is allowed to exist so extensively in Ireland ; that it would afford facilities for personation. While we admit that there is force in many of these objections, we are on the whole of opinion that the ballot possesses many great advantages, and that the weight of evidence leads to the conclusion that this change in the mode of voting would not only promote the tranquility both of municipal and parliamentary elections, but will also protect the voter from undue intimidation and introduce into elections a greater degree of freedom and purity than is secured under the present system. But, in recommending the adoption of the ballot, we desire to express our opinion that in order to secure the benefits we anticipate from its introduction into this

country, the secrecy of the ballot should be inviolable, except in the case of any voter who is found guilty of bribery, or whose vote, in due course of law, has been adjudged invalid.¹

A declaration so powerful, so impartial, so deliberate, would have made a crisis at any time ; coming, as it did, when men were weary of corruption, eager for freedom, and ready for change, it made a revolution. An immense number of new voters had been enfranchised, an entirely new set of questions was under debate, and a good many old prejudices were slowly dying away. The direct result was the elections (parliamentary and municipal) bill of 1870, authorizing the ballot. It was read a second time April 3, 1871, without opposition. Mr. W. E. Forster had charge of it. Opponents now opened their batteries, practising all kinds of delaying and obstructive tactics, making long and irrelevant speeches, and moving adjournments of the debate and of the House continually. Mr. Gladstone's supporters met in council to consider how to defeat these tactics, and they resolved to withdraw their own amendments and leave the House when opponents got up to make long speeches. By these means, and the exercise of great patience, the bill was read a third time by August 8. Two days later the second reading was moved in the House of Lords. Lord Shaftesbury led the opposition, and the bill was rejected by 97 votes to 48. On the second day of the next session, Feb. 8, 1872, the bill was again read a second time in the Commons, and passed May 30. The Lords passed it through a second reading this time by 86 to 56 votes, and the measure became law.²

Polling under it extended from eight in the morning until four in the afternoon ; but a subsequent act extended the hours of polling for the benefit of the working-classes from 4 A.M. to 8 P.M. in constituencies with over 2000 voters. Efforts were made to ascertain how persons voted, and thus defeat the secrecy of the ballot, by delivering party cards to the voters to give up at the booths, after voting, to agents of the candidates ; but these efforts were confined wholly to one political party, and were soon abandoned.

¹ *Times*, March 17, 1870.

² 35 and 36 Vict. cap. 33 (vol. vii, p. 193).

The *Quarterly Review*, the organ of the intellectual Tories, said the bill had been passed "in deference, not to a genuine popular demand, but to a fading political tradition," and it predicted that elections would "come to be regarded as nuisances" whilst "voting may cease to be habitual."¹ But though the Lords, by a time limit to the act, provided for a change of opinion against the ballot, no such change has made its appearance. The ballot is now an English institution. It has been appropriated, incensed, and sanctified.

II. *Its Practical Working.*

Considering the ferocity of its assailants and the zeal they displayed in prophecy, it is very remarkable that the ballot has so generally and completely fitted itself into the British constitution. It has worked admirably. There is no wish for any change. The country squires do not suggest it. Large employers of labor never dream of it. Irish priests barely think of it. Yet these classes can no longer poll their men as they used to do, leading them up in procession, standing alongside the booths, and hearing them vote. Elections were never so orderly. The nomination is scarcely a perceptible event in its own centre or immediate neighborhood. The polling-day passes off quietly. No "states of the poll" can now be issued by political parties, at hourly intervals, (as used to be the case when votes were openly tendered,) to fan excitement and to indicate how contests are going. Except that conveyances (lent by friends of the candidates, as they cannot now be hired by the candidates themselves,) are rapidly moving about, bringing up voters, there is scarcely any bustle. The ballot itself is rapidly and quietly taken; and the voter is often surprised to note how quickly the votes are recorded and the voters pass away, whilst the exterior of a polling station is apparently so lifeless. Perhaps more organization may be required in looking after the voters, but one never hears an elector complain of the method, even if the less intelligent sometimes blunder in making their crosses or put too many upon the paper. The counting is officially made quite

¹ Vol. 133, p. 288, 283.

as soon as it used to be under the old plan. It was upon this point Lord Denman made his protest after the bill was passed in the Lords. He objected to it amongst other things because, — so his protest of June 25, 1872, runs, — “after the balloting, the collection of the boxes and counting of papers would make a declaration of the poll a subject of suspense or delay for many days in large constituencies.”¹ In compact constituencies, the poll is usually declared the same day, within three or four hours of its closing. Even in county constituencies, with polling stations several miles apart, this is often possible. But where the collection of the ballot-boxes is difficult, owing to want of railway communication, or where the expense of hiring another set of officials to count, over and above the officials engaged in receiving the vote, is considered undesirable, or when it is thought wise not to keep excited crowds hanging about until midnight, or, at the discretion of the returning officer for any other valid reason, the counting may be deferred until the next morning. The sealed ballot-boxes, in the meantime, are in the care of the returning officer at the counting station, which usually means the custody of the police. The counting begins in the morning, and the poll is declared about midday.

English political opponents never before invented so many dreadful things, to discover that not a single one of them was true, as in the case of the ballot. In orderliness alone, the gain has been worth anything sacrificed in the way of boldness and *viva voce* voting. The ballot, in fact, is business-like; the old plan was a pompous theatrical display. Poll books used to be issued after the old contests, showing how every elector voted. Hundreds of them are now in the British Museum, and instances are not unknown in which landlords have kept them to remember how their tenants voted, or shopkeepers have retained them as evidence of their personal fidelity to “the cause” espoused by most of their customers. As a part of the ballot reforms, the old open-air or hustings nomination, with its speech-making, was discontinued. A paper nomination took its place, and it has worked well. The ballot act provides that on a given num-

¹ Rogers' *Protests of the House of Lords*, vol. 3, p. 484.

ber of days after receiving the writ of election, the returning officer (the mayor, or sheriff, or whoever he may be) shall sit for two hours to receive the nomination papers. Only one candidate can be nominated on one paper, and he must be described as to address, rank, and calling, so as to be identifiable. He has to be proposed by one voter and seconded by another, and eight registered electors have to sign the paper as assenting thereto. The returning officer supplies the form of nomination paper as fixed by the second schedule of the act ; but the use of such a paper so supplied is not obligatory, though convenient and wise, since a technical objection, if successful, might invalidate a nomination. No instance of other than an official paper being used is on record. To avoid a danger of this kind, a candidate is nominated two or three times by different electors. The nomination paper does not indicate the politics of the candidate or of his proposers. The returning officer knows nothing of political parties ; he has simply to deal with candidates identifiable, and with registered electors. He may be a partisan, but he cannot, if he wishes, be very unfair. There is no hindrance whatever to free and independent nomination. A clique of twenty with a candidate can nominate him on two distinct papers, without questions asked or hindrance of any kind. In parliamentary elections, it is not often that a "dark horse" is nominated at the last moment ; but the practice is common in municipal contests, and then the two parties hold a conference and arrange withdrawals to save a contest in selected cases. It is a little surprising, now that large towns have been cut up into single member districts, that this general or non-party nomination has not been adopted. Organizations, it is seen, practically select candidates, but they cannot nominate them, whilst a candidate's social or professional description is all that the law permits to appear on the nomination paper. In municipal contests, cases have been known in which men of the same name, surname and Christian, have been nominated to confuse the voter and scatter the votes. The prescribed form includes addresses, and they are also printed on the ballot-papers, as will be seen further on. These

regulations have not checked, but rather promoted freedom of nomination. A small party, making a moral protest, used in the hustings-days to be exposed to a good deal of chaff from the crowd. Under a paper system, nothing of the kind can occur. The check to reckless nominations comes into effect in another way. A candidate who goes to the poll, even if he polls but one vote, is compelled to contribute a part of the returning officer's expenses, discovered by dividing the sum total of the expenses by the number of the candidates. If necessary expenses were thrown upon the local rates, it is contended that reckless nominations might follow.

The returning officer provides the ballot-boxes, the ballot-papers, and arranges the numbers, sites, and officers of the polling stations. The polling stations are settled beforehand by the local authority, on two principles: a county elector is to have a station to poll at within four miles of his residence, and the minimum number of electors for any station is one hundred. Upon the number of stations in a populous centre depends the ease and rapidity of taking the ballot. An official statement is published, showing by register number of the electoral roll, or by districts or otherwise, at what polling station certain voters in certain streets, parishes, and townships are to vote. It is also customary for the candidates to send round cards, informing each voter that his number on the register is so and so, and his polling station at such a place. The card is taken by the voter, and agents ask for it as soon as he emerges from the polling place, convey it to the committee room, and mark off his name as having voted. "Your number, sir?" is the formula when no card is used. This is allowable, but the voter need not answer or use the card at all, or he may give the card to the opposite party agent. The register number of a voter changes with every annually revised register of electors, and the probability is that it is quite unknown to him. The returning officer also provides an official stamp for each polling station, copies of the register, and police to preserve order and regulate ingress and egress.

The taking of the poll is simple. All the stations open

simultaneously at 8 A.M. A voter presents himself at the table where the presiding officer sits, attended by a clerk, and having before him a copy of the electoral register, ballot-books with counter-foils, and the ballot-box, which has previously been shown to be empty to the representatives of the candidates present, locked by the presiding officer, and sealed by him. On either side of the officer sit representatives of the candidates, selected for their knowledge of voters in the district, to check personation, one for each candidate, and each with a copy of the register before him. The voter gives or is asked for his name. It is found in the register, and a pencil line is drawn through it or under it. The officer then writes the register number of the elector on the counter-foil and stamps the ballot paper with the official mark, which is kept secret and has to be changed so that the same mark shall not be used again within less than seven years. The ballot paper and the counter-foil have a printed number upon them; the one on the back, the other on the face. The names of the candidates are arranged in alphabetical order. The following is a form :—

<div>No. 1045</div> <div>1230</div>		1	BROWN. (John Brown, of 52 George Street, Bristol, Merchant.)	
		2	JONES. (William Jones, of High Elms, Wilts, Esq.)	
		3	MERTON. (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Bucks.)	
		4	SMITH. (Henry Smith, of 72 High Street, Bath, Attorney.)	

On receiving the paper, torn off at the perforated line, the voter takes it into one of the private compartments in the room,

where there is a small desk and a pencil attached to a string. Here he marks his cross against the candidate or candidates for whom he wishes to vote. Folding up his paper so that the official stamp, which goes through, or maybe a mark on back and front, is visible at the back to the officer who is sitting near the box, he puts it in the slit of the ballot-box, by which a policeman stands, and his voting is over. The official paper and mark prevent the use of fraudulent papers, which are quite unknown, and heavy penalties are attached to the use of unofficial papers or to the conveyance of an official paper outside the booth. A paper inadvertently spoiled — say, torn by the pencil — must be taken for examination to the officer, who will, if satisfied of such inadvertence, supply the voter with another.

It is customary but not imperative to provide a distinct mode of egress from the station, as it facilitates voting. Special provision has been made for blind and illiterate voters. It may be better to quote (from the act) section 26 of schedule 1 entire, as it explains itself :

The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this act, or (if the poll be taken on a Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot-box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this act called “the list of votes marked by the presiding officer.”

The declaration form (schedule 2) runs :

I, A. B., of _____, being numbered _____ on the register of voters for the county [or borough] of _____, do hereby declare that I am unable to read. _____ A. B., _____ his mark.

[Date.]

I, the undersigned, being the presiding officer for the _____ polling station for the county [or borough] of _____, do hereby certify,

that the above declaration, having been first read to the above-named A. B., was signed by him in my presence with his mark.

Signed, C. D.,

Presiding officer for

Taking such votes requires a few minutes extra, but no difficulties have been suggested. Blind men are as common in some districts as illiterates, and they are passed on to the care of the policeman at the door. Instead of their infirmity proving a hindrance to them, they are delighted to exercise the franchise. Illiterates are not quite so eager to vote, except during municipal contests; and when they have children attending board schools they have been known to practice reading and filling up, to escape that sense of inferiority they might otherwise feel. In the days of *viva voce* voting, illiterates were often bothered with an uncommon name, pronounced it incorrectly or vulgarly, an agent for the other candidate objected, and the vote was refused. Further, where there are only two or three names on a ballot paper, the position of the candidate for whom an illiterate wishes to vote can easily be made clear to a voter by his friends before he enters the booth. There can be no question that the ballot has been one of a series of steps in rendering a poll easier, quieter and quicker. Before the reform act of 1832, a voter had to establish his right to vote when he presented himself to vote. He might be an hour under examination before he could vote. The formation of a register, behind which the presiding officer cannot go, has cleared away all this business. The register is revised yearly; a barrister sits in court and rival parties make, amend, and contest claims. The parliamentary register is settled in the autumn, and comes into effect on the first day of January following. The municipal register, which includes women ratepayers, comes into effect November 1. In introducing his reform bill, Lord John Russell said he should provide machinery for taking elections in two days, but he added: "I hope the time may soon come when the machinery will be so simple that every vote may be given in a single day." That result had been accomplished before the ballot was made law, but when the poll closed at four in

the afternoon a good many working-class electors were never able to vote at all. If they had some distance to walk or ride to work, they could not poll after eight in the morning, and they were not able to poll after four in the afternoon. With the present enlarged franchises, it would be scarcely possible to record more than five-sixths of the votes in a large constituency by four o'clock, and without the ballot not so many could be given in the present legal time between 8 and 8. The ballot has thus, indirectly, been an enfranchising measure. Not many working-men can vote in the morning, and there is usually a rush of them between twelve and one, and again between six and eight o'clock. It will some times happen that, at certain stations, some working-class voters will be in a block outside when the door is closed. But the solid fact remains that before the time when our large borough constituencies were divided into independent districts, each returning one member, twenty, thirty, forty, and even fifty thousand votes were easily taken in twelve hours. With proper facilities, in the form of abundant polling stations, there is no limit to the power of vote-recording under the ballot.

The counting can be readily accomplished in a few hours. Before they were cut up into separate constituencies, Liverpool, Glasgow, Manchester and Birmingham used to count their twenty to forty thousand votes by midnight. In taking a school-board ballot, under the system of cumulative voting, there is more delay, but everything depends on system in counting. With self-counting sheets, so ruled beforehand, counting is very quickly done. The plan in parliamentary ballots is partly prescribed. First, each box is opened at the counting centre in presence of the agents of the candidates and usually of the candidates themselves; its papers, face upwards, are counted and checked with the statement received from the presiding officers. Secondly, the papers from all the boxes are mixed together, face upwards. Thirdly, where there are two members to be returned, the single votes, or "plumpers," are, or may be, sorted out, and the cross-votes, as one Liberal and one Tory, are similarly served. Fourthly, the papers are

counted into packages of one, two, three, four, or five hundred, and then the final statement is prepared. Doubtfully marked papers, or invalid papers having too many crosses or none at all, are usually sorted into special packages.

The provisions for secrecy are effective. Every officer, clerk or agent, before the opening of the poll, has to make a declaration of secrecy in the manner prescribed, and so of the person attending the counting. Six months' imprisonment, with or without hard labor, is the maximum penalty for an infraction of the law, on conviction, in such respect. The rule is to allow only one voter, or at the most two voters, in a polling station at the same time, and the counting always takes place in a room with locked doors. The ballot-boxes are sealed up, and so are the unused, spoilt, "tendered" ballot-papers, the registers used, and the lists marked by the presiding officer. Candidates' agents can add their seals to those of the presiding officer. The police convey the boxes and packages, in cabs, to the counting centre. After the counting, the papers, registers, lists, *etc.*, are sealed up in separate packets, and sent to the clerk of the crown in chancery, who retains them for one year, when, unless otherwise ordered, they are destroyed.

Unless a voter bungles strangely, how he votes cannot be discovered in the polling-booth, and cannot be traced in the counting. If it were so traced, it is an offence to make the fact known. The voter himself can say what he pleases about his vote, but no one concerned in the act of its record can speak about it. In the event of a scrutiny, under petition, there are special regulations for limiting the information disclosed. Amongst the ignorant, however, especially in the rural districts, partisans cleverly suggest doubts as to secrecy, and they still linger in some minds, but without any warrant.

It is admitted that the English system is simple, protected from fraud, and absolutely successful. There is positively no record of attempts to defeat its secrecy or to organize fraud, and if they were made they would be instantly discovered and punished. It was worth waiting a little longer to attain this degree of perfection, and to have a reform buttressed by public

opinion. Clever tacticians sometimes make an effort to anticipate a ballot, and to obtain declarations a voter may consider binding. A form is sent round to the electors, by post, with a stamped envelope for its return to the agent of a candidate or the chairman of his committee, in which the voter is made to say, "I intend (or promise) to vote for" so and so. The plan originated with the territorial party, and it is hardly a fair one. It is usually put into operation early in a contest, sometimes when there is as yet only one candidate in the field. But it can be easily met by a voter's declining to return the form, which he is not bound to do. Probably 40 per cent of the forms are detained or destroyed. The plan is costly, and the last corrupt practices act, by imposing a limit on expenditure, has greatly reduced its significance and use. It was never more than a lawyer's dodge.

The effect of the ballot upon corruption has been very great. Treating and direct bribery were at once diminished by it. It is useless to corrupt unless its effects can be clearly traced ; and spending money to purchase votes is simply waste when a voter, demoralized enough to take money, can still vote as he pleases without being found out. The act of 1883, limiting agents and messengers, reducing expenditure, and more severely punishing bribery, treating, and other forms of corruption, as well as bringing in acts done a month before an election, has signally helped the ballot to purify our political contests. In some respects, the rich candidate has still advantages : he can subscribe more freely to local institutions ; he can spend more money in supporting local political organizations ; and he is likely to have more friends who will lend him carriages on the day of polling. Two reforms are needed, however, to make the ballot absolutely perfect, — house to house canvassing should be prohibited, and landlords' agents, stewards, bailiffs, and factors should be prohibited from taking part in an election, or looking after the conveyance of voters to the poll. There could be no objection to a proviso permitting such action where the landlord himself was a candidate, inasmuch as it is against wealthy class combination that protection is needed, and individual freedom should be as little fettered as possible.

The general moral effect of the ballot has been good. It was designed to protect conscientiousness, and it has developed it. It has broken the terrible continuity of feudal traditions. It has given political virility to the individual voter and the undemonstrative politician. The barrier of law has been erected against undue influence, let it come whence it may—from the landlord, the employer, the priest, or the executive government. To restore, through social associations, what they had lost politically, has been the aim of the aristocratic party ever since, by forming working-men's associations, directed by ennobled patrons, and by "Primrose Leagues," officered by titled ladies and conferring cheap distinctions. Free voting has been followed by general voting. Abstentions are less and not more common. But it deserves mention that we have had striking oscillations of opinions, under the ballot, at our general elections. The changes from 1873 to 1874, and from 1879 to 1880, and from 1885 to 1886 are often attributed to other things, as democratic uncertainty and impatience, when it would be more correct to say that opinions in course of quiet formation in two of the instances given, and some natural doubt in the third, were suddenly flashed on the screen by the light of secret voting. Statesmen must study more carefully the signs of popular feeling when they have to govern under a ballot-system than when there is open voting; and this is rather an advantage than otherwise in any country. Moreover, the dominance of a metropolis, so much to be feared in countries with a wide suffrage and a developed newspaper press, can be only temporary where the ballot encourages political resistance.

The English form of ballot readily admits of adjustment to the American political system. It has served England in the school-board election, where the elector has to distribute an uneven number of votes amongst several names upon one and the same ballot-paper. It worked well under the "three-cornered" system and the restricted vote. In each case polls were taken in a single day and with ease and quietude. In many instances there were no difficulties in counting and declaring

the result on the same day. The ballot can, in fact, be as readily used for the election of several members as for a single member election. Under the new system of local government about to be introduced in this country, it may be thought desirable to elect several distinct representatives on the same ballot-papers and at the same time, in which case an approximation will be made to the American plan. Senator Wyman, of Cambridge, Massachusetts, has been good enough to make me acquainted with the ballot-project of April 8, 1888, and I have before me a specimen ballot-paper, in two columns, containing thirty-two names, with a corner for a popular vote on the license question. It would be a simpler duty to fill up this ballot than to vote for six candidates out of twenty for thirteen seats on a school board when the elector had exactly thirteen votes to give. The number of officers to elect, and the consequent size of the ballot-paper, cannot materially affect the ease and rapidity of voting amongst fairly educated electors. The paper might be doubled in size without real inconvenience. It would take more time to fill, and more time to count; it might also necessitate better mechanical means in registering numbers and in preventing the use of fraudulently imitated papers; but a numbered counter-foil could still be used, the plan of marking a register number on the face of the counter-foil could be adopted, and provision made for a scrutiny, if considered desirable. An increase of polling stations would much facilitate the rapid taking of a large number of votes in state elections, and the counting is of minor importance, though it could be readily finished on the day following a poll. The Massachusetts ballot-paper indicates the party designation of the respective candidates. There can be no objection to this plan. It is very helpful where there are so many officials to be elected and so many candidates. But it seems desirable to state more distinctly the addresses, so as to avoid any confusion that might be caused if candidates of the same name, Christian and surname, were nominated in order to confuse the voter. The addition of an instruction along the side of the vote-squares, as "Vote for one," "Vote for two," is novel and useful. Instructions are

officially placarded in England, and usually sent direct to the voter by the candidates on the cards already mentioned. Where there are so many votes to be recorded, the voter should be in no uncertainty as to how many votes he can give in each case. The nomination of candidates individually may not be possible in America, but it has answered very well with us, and it might be adopted, with the addition to the ballot paper of his party designation, in order to guide the voter. In other ways it would be possible to appropriate points in the English system that have stood the test of experience and given our electors a confidence in the fairness and absolute secrecy of the ballot which has preserved it from reactionary reformers, always on the watch for opportunities to restore corrupt influences and revive extinguished power.

The complete or even partial adoption of the English method would be a great historical compliment, if it could hardly be considered a vindication. The time has gone by, with us, when anything American is necessarily to be condemned. We should be delighted to find a similar improvement as to anything politically English in the United States. The cause of pure and enlightened democracy has to be championed and carried forward by the great English-speaking nations.

EDWIN GOADBY.

III. *Its Legal Incidents.*

The machinery of secret voting introduced by the ballot act has necessarily involved some change in the legal incidents of a contested election. At common law, the returning officer was treated for many purposes as holding an office of a judicial or quasi-judicial character. He was sworn to make a return of that candidate who in his judgment had a majority of legal votes, and was therefore entitled and bound to consider and determine the qualifications of voters. It follows that an action would not lie against a returning officer for improperly rejecting a vote, unless it was alleged and proved¹ that the refusal was wilful (*i.e.*, perverse) and malicious.

¹ As in the leading case of *Ashby vs. White*.

Under the ballot act the judicial functions of the returning officer have been reduced to a minimum. He is required to decide upon the validity of objections raised to the written nomination papers of the candidates. But it would seem from a recent decision of the House of Lords¹ that his duty in this respect is confined to disposing of "formal objections arising upon the face of the paper, and making inquiry as to whether the nominators are registered electors, and whether the paper is in statutory shape." He cannot, therefore, go behind the paper and consider extraneous objections to the legal eligibility of the candidate, on the ground, *e.g.*, that he holds an office which disqualifies him from being elected.

As regards the holding of the poll, it is the business of the returning officer to provide proper polling-stations, ballot-boxes and papers, stamping instruments, copies of the register, *etc.*, and to appoint a presiding officer and a sufficient number of clerks for each polling-station. The Hackney election in 1874 was declared void, because, through the failure of the returning officer to supply the necessary boxes and other materials, no poll could be taken at two of the appointed polling-places, and out of a constituency of 41,000 electors 5000 were thereby prevented from recording their votes. It was not necessary in this case to determine whether the returning officer (who had acted *bona fide* and with reasonable care) had come under any legal liability either to the candidates or to the voters; but as his duty to provide properly equipped polling-stations is obviously ministerial, it appears clear that he could be sued for a breach of it (without proof of malice or negligence) by any person who could show himself to have been aggrieved.

The process of taking the votes, which consists in delivering to each elector a properly stamped ballot paper, entering upon the counter-foil his number in the register, and placing a mark in the register against that number, falls within the province of the presiding officer. These are ministerial duties, and it was decided by the Court of Common Pleas,² in 1873, that an action would lie against a presiding officer, who had delivered to cer-

¹ Pritchard *vs.* Mayor of Bangor.

² In the case of Pickering *vs.* James.

tain electors ballot papers, not bearing the official stamp, which by reason of this defect had been held invalid on a subsequent scrutiny.

Neither the returning nor the presiding officer has any jurisdiction to inquire into the qualifications of a person who tenders a vote at a polling-station. The only questions which may be put to the voter are as to his identity with the person entered on the register, and as to whether he has already voted. His answers to these questions are, for the purposes of the day, conclusive, and the officer may not inquire into their truth or falsehood. If, however, another person has already voted in the same name, the later applicant receives a specially colored ballot paper, which is not put in the box, but set aside in a separate packet (of "tendered votes"), and not counted in the enumeration of the poll. The offence of personation (previously a statutory misdemeanor) is made by the ballot act a felony, and is extended so as to include the act of applying for a ballot paper in the name of another person, real or fictitious, or after having already voted at the election. To forge or counterfeit a ballot paper or the official mark; fraudulently to put into the box any paper other than a ballot paper, or to take a ballot paper out of the polling-station; to destroy or open or otherwise interfere with a ballot-box or packet of ballot papers — are misdemeanors. To endeavor to obtain in a polling-station information as to how a person has voted, or to communicate information so obtained, is an offence summarily punishable with six months' imprisonment.

In counting the votes at the close of the poll, a judicial duty of great delicacy and importance is committed to the returning officer. He, and he alone, has to determine (subject, of course, to his decision being reviewed by an election court in the event of a petition against the return) "any question arising in respect of any ballot paper." In every election conducted by ballot there is a number of instances of papers marked in such a manner as not to conform with the directions of the act. Experience shows that there are a hundred ways in which ignorance, perversity or fraud may misunderstand or seek to evade the

simple requirements of the law. It would be profitless to discuss the numerous cases, each turning upon its own facts, in which election courts have had to consider the correctness of the returning officer's decision in accepting or rejecting papers inartificially or illegally marked. The result of the authorities may be shortly stated to be that the provisions of the act, as to form, are directory only ; that a substantial (as distinguished from a literal) compliance with them is all that the law requires ; and therefore that any paper, however informal, which unambiguously indicates the intention of the elector to vote for a particular candidate, and which does not (by written words or signs) give any clue to the identity of the voter himself, is valid and ought to be counted by the returning officer.

The arithmetical process of counting the number given to each candidate of the papers which the returning officer has decided to be valid is plainly a ministerial function. It is also, however, a matter in which mistakes of great consequence may easily be made, and it has accordingly been held that a petition for a recount will lie. In the Ashton-under-Lyne case, early in 1886, upon such a petition, Mr. Justice Denman, one of the election judges, ordered the ballot papers to be brought up to London to the royal courts of justice, and himself recounted them in the presence of counsel for the petitioner and for the sitting member.

After the count, the returning officer is "forthwith" to declare elected "the candidates or candidate to whom the majority of votes has been given." He has no power to make any other declaration than such as is warranted by a correct enumeration of the papers. In the Bangor case, already referred to, the returning officer was advised that the candidate who had received a majority of votes was disqualified, and that, his disqualification being known to the electors, the votes given to him were thrown away. He accordingly published a placard in which, after stating the number of votes polled for each candidate and the effect of the advice so given to him, he purported to declare elected the candidate who had received the lesser number of votes. The law lords were unanimously of opinion

that this announcement must be treated as a declaration that the candidate shown by the numbers stated to be in a majority had been elected, and that the rest of it, including the assumed declaration in favor of the other candidate, was *ultra vires* and wholly nugatory.

The person declared to be elected fills the seat, and can (in general) be ousted only by an election petition presented to the High Court of Justice and tried by two election judges. Where the petition alleges, as its ground, a breach by the returning officer of any of the duties cast upon him by the ballot act, it will not be successful unless the petitioner can show either (a) an improper acceptance or rejection of a sufficient number of ballot papers to alter the result, or (b) mistakes in the enumeration of valid papers such as (when set right) to get rid of the apparent and declared majority, or (c) such general irregularities in the conduct of the election as to show a substantial departure from the system of voting prescribed by the act. The first case (in which the petitioner asks for a "scrutiny") is the least uncommon of the three; and it is obvious that, as the inquiry turns altogether upon whether the papers received or rejected are or are not good upon the face of them, the identity of the voter need not be disclosed, and the secrecy of the ballot is not in danger. In the other two cases, from the nature of the issue, no question can arise as to how particular electors have voted.

It may, indeed, be stated with substantial accuracy that the only case in which, under our system, the ballot-box can be forced to yield up its secrets, is upon a scrutiny, in which votes are sought to be struck off on the ground of personal disqualification in the votes, *e.g.*, through bribery or personation. Where a candidate or his agent is proved to have corrupted a person who voted, the ballot paper of the voter is not looked at, but a vote is struck off the poll of that candidate. Where an elector has voted corruptly, but no complicity on the part of a candidate or his agent can be shown, the counter-foil is looked to, and the ballot paper having by its means been traced, the vote actually given by the delinquent is struck off the poll of whichever can-

didate received it. The disqualification must be first proved before the ballot paper can be examined.

It may be added that during the fifteen years that the ballot has been in force in the United Kingdom the legal controversies to which it has given rise have been surprisingly few, and the number of cases in which it has been necessary or possible to inquire in public how particular individuals have voted is quite insignificant.

H. H. ASQUITH.